

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FORD MOTOR CREDIT COMPANY,

Plaintiff,

v.

NO. CIV. S-04-2344 LKK/JFM

MICHAEL DAUGHERTY,

Defendant.

\_\_\_\_\_  
AND RELATED COUNTER-CLAIM AND  
THIRD-PARTY COMPLAINT.  
\_\_\_\_\_

Pending before the court is plaintiff Ford Motor Credit Company's motion for attorney fees and costs pursuant to California Civil Code § 1717 and Rule 54 of the Federal Rules of Civil Procedure.<sup>1</sup> I decide the matter based on the papers and pleadings

<sup>1</sup> California Civil Code § 1717(a) provides:

where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract

1 filed herein.

2 **I.**

3 **FACTS**

4 Ford Motor Credit Company, brought suit against defendant  
5 Michael Daugherty for two breach of guaranty claims regarding a  
6 wholesale agreement and a capital loan agreement and promissory  
7 note. Defendant answered, and along with third-party plaintiff  
8 Daugherty Lincoln-Mercury, Inc. ("DLMI"), brought a counterclaim  
9 against plaintiff as well as third-party defendant Ford Motor  
10 Company, Lincoln Division. The counterclaims alleged that  
11 plaintiff breached the guaranty agreements, the covenant of good  
12 faith and fair dealing, engaged in unfair business practices and  
13 interfered with plaintiff's prospective business advantage. A  
14 number of the counterclaims were dismissed on February 21, 2006.  
15 The court granted summary judgment in favor of plaintiff on all  
16 claims on May 1, 2006. Judgment in the amount of \$505,217.67 was  
17 entered on May 16, 2006.

18 **II.**

19 **STANDARDS**

20 Where, as here, suit is based on California substantive law,  
21 an award of attorneys' fees incurred in the suit is governed by  
22 state law. See Kona Enters., Inc. v. Estate of Bishop, 229 F.3d  
23 877, 883 (9th Cir. 2000). Under California law, a prevailing party  
24 is ordinarily not entitled to attorneys' fees unless the parties

25 \_\_\_\_\_  
26 or not, shall be entitled to reasonable attorney's fees  
in addition to other costs.

1 have previously agreed to the fees, or the fees are otherwise  
2 provided by statute. See Lerner v. Ward, 13 Cal.App.4th 155, 158  
3 (1993) (citing, inter alia, Reynolds Metals Co. v. Alperson, 25  
4 Cal.3d 124, 127-128 (1979)).

5 The two contracts at issue provided for attorneys' fees. The  
6 Capital Loan Agreement, which this court found defendant breached,  
7 provides that:

8 If Borrower shall fail to make any payment or perform  
9 any act required by this Agreement or the Security  
10 Documents, then Lender, without notice to or demand upon  
11 Borrower and without waiving or releasing any obligation  
12 or default, may make such payment or perform such act  
13 for the account of and at the expense of Borrower. All  
14 sums so paid by Lender, and all costs and expenses,  
including, without limitation, reasonable attorney's  
fees and expenses so incurred together with interest  
thereon . . . shall constitute additions to the  
Indebtedness secured by the Security Documents, and  
shall be paid by Borrower to Lender, on demand.

15 Beyer Dec., Ex. C. Furthermore, the guaranty on the capital loan  
16 agreement provides that:

17 Guarantor agrees to pay reasonable attorneys' fees and  
18 expenses incurred by Lender in enforcement of the  
Security Documents, including this Guaranty.

19 Beyer Dec., Ex. E. It is clear that the contracts between the  
20 parties include provisions allowing plaintiff to recover attorney  
21 fees.

22 Both the federal and the California courts have adopted the  
23 "lodestar" method for calculating attorney's fees. Hensley v.  
24 Eckerhart, 461 U.S. 424, 433 (1983); Serrano v. Priest, 20 Cal.3d  
25 25, 48-49 (1977). To determine the appropriate fee amount, the  
26 court multiplies the number of hours reasonably expended in the

litigation by a reasonable hourly rate. Id.

### III.

#### ANALYSIS

##### A. PREVAILING PARTY

The Supreme Court has articulated the standard for a finding of "prevailing party" as whether the party has "succeed[ed] on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." Hensley, 461 U.S. at 433 (citing Nadeau v. Helgemoe, 581 F.2d 275, 278-279 (1st Cir. 1978)). The Ninth Circuit, in discussing whether a party has achieved "prevailing" status, has noted that a party can achieve that status by establishing a "clear, causal relationship between the litigation brought and the practical outcome realized." Rutherford v. Pitchess, 713 F.2d 1416, 1419 (9th Cir. 1983) (quoting American Communist Party v. Munro, 650 F.2d 184, 188 (9th Cir. 1981)).

Plaintiff brought suit against defendant for breach of two guaranty agreements and as a result of the litigation, the court concluded that defendant breached those agreements. There is clearly a causal relationship between the litigation brought and the outcome achieved. Accordingly, plaintiff is entitled to attorney's fees as the prevailing party.

##### B. REASONABLE HOURLY RATE

The appropriate hourly fee should be based on the rates charged by counsel with similar experience, reputation, and skill for similar cases in the legal community. See White v. City of

1 Richmond, 713 F.2d 458, 460 (9th Cir. 1985). The burden is on the  
2 fee applicant to produce satisfactory evidence that the requested  
3 rates are in line with those in the prevailing community for  
4 similar services by lawyers of comparable skill, experience, and  
5 reputation. Blum v. Stenson, 465 U.S. 886, 895, n.11 (1984).

6 Plaintiff's counsel, David E. Pinch, seeks \$225.00 per hour  
7 for work performed on this case. Mr. Pinch has over nineteen years  
8 of experience practicing commercial litigation law. Pinch Dec. at  
9 ¶ 6. Duane M. Geck, a senior partner of the Severson & Werson law  
10 firm, has over twenty years of commercial litigation experience.  
11 Pinch Dec. at ¶ 7. Plaintiff explains that the rate of \$225 is a  
12 discounted rate from the usual hourly rate charged by Mr. Pinch  
13 (\$275) and Mr. Geck (\$395). Pinch Dec. at ¶ 6-7. Defendant  
14 alleges that plaintiff has failed to provide adequate support that  
15 the rates being requested by plaintiff's counsel are the prevailing  
16 rates in the community. Def.'s Opp'n at 2. Instead, defendant  
17 invites the court to "use its own knowledge of the relevant market"  
18 to determine a reasonable hourly rate. Id. at 3.

19 After considering counsel's legal experience, the court  
20 determines that the rate of \$225 adequately reflects the prevailing  
21 hourly rate in the Sacramento area for similar work performed by  
22 attorneys of comparable skill, experience and reputation.  
23 Plaintiff has not tendered evidence as to comparable rates in the  
24 Sacramento legal community, instead providing only evidence as to  
25 the rate typically charged by Mr. Pinch and Mr. Geck. The Ninth  
26 Circuit has repeatedly held that "determination of a reasonable

1 hourly rate is not made by reference to the rates actually charged  
2 [by] the prevailing party." Mendenhall v. NTSB, 213 F.3d 464, 471  
3 (9th Cir. 2000)(quotations omitted).

4 Nevertheless, the rate sought by plaintiff more than comports  
5 with fees awarded by this court in other cases. See, e.g., Johnson  
6 v. Norman and Edith Hill Trust, No. Civ. S-04-699 (E.D. Cal. May  
7 2006)(Karlton, J.)(awarding attorney with twenty seven years  
8 experience in Sacramento \$250 per hour); Healy v. MCI Worldcom  
9 Network Services, Inc., No. Civ. S-02-1575 (E.D. Cal. Mar. 2006)  
10 (Karlton, J.)(awarding attorney with thirty years experience in  
11 Sacramento \$325 per hour); Asberry v. City of Sacramento, No. Civ.  
12 S-01-2343 (E.D. Cal. Apr. 2004) (Karlton, J.)(awarding attorney  
13 with fifteen years of experience in Sacramento \$275-\$325 per hour).  
14 The court therefore calculates the lodestar figure based on the  
15 hourly rate of \$225.<sup>2</sup>

16 **C. REASONABLENESS OF HOURS BILLED**

17 Plaintiff seeks to recover attorney fees for a total of 257.8  
18 hours expended in the litigation.<sup>3</sup> In arriving at the lodestar  
19 figure, the district court should exclude hours that are  
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21 <sup>2</sup> Plaintiff also seeks to recover attorney fees for 7.7 hours  
22 of work by Catherine Stark at a rate of \$225 per hour. Pinch Dec.  
23 at ¶¶ 5, 9. Plaintiff's declaration, however, is silent as to Ms.  
24 Stark's legal experience. Since plaintiff has failed to meet its  
burden of proof as to Ms. Stark's experience, the court declines  
to award attorney's fees for the 7.7 hours she allegedly spent on  
the case.

25 <sup>3</sup> Plaintiff's motion requests attorney's fees for 265.5 hours  
26 spent on the litigation. Deducting 7.7 hours for the work billed  
by Ms. Stark, the court arrives at 257.8 hours.

1 "excessive, redundant, or otherwise unnecessary . . . ." Hensley,  
2 461 U.S. at 434.

3 Defendant raises several objections to the amount of hours  
4 plaintiff's counsel seeks to recover in fees. First, defendant  
5 asserts that an attorney's fee award must be apportioned and that  
6 plaintiff should not recover for time spent defending certain  
7 counterclaims filed by Daugherty and DLMI. Def.'s Opp'n at 4.  
8 Defendant points out that the terms of the guaranty agreement allow  
9 for reasonable attorneys' fees and expenses incurred "in  
10 enforcement of the Security Documents," and implies that attorneys'  
11 fees can be sought only for such enforcement. Beyer Dec., Ex. E.  
12 Apportionment is not required where claims are "inextricably  
13 intertwined, making it impracticable, if not impossible, to separate  
14 the multitude of conjoined activities into compensable or  
15 noncompensable time units." Abdallah v. United Sav. Bank, 43  
16 Cal.App.4th 1101, 1111 (1996) (citations and quotations omitted).  
17 The decision to apportion claims are within the discretion of the  
18 court. Hubbard v. Twin Oaks Health and Rehabilitation Center, 406  
19 F.Supp.2d 1096, 1100 (E.D. Cal. 2005)(Karlton, J.).

20 It would be impracticable for the court to apportion the fees  
21 in this case because plaintiff's claims and defendant's  
22 counterclaims all arise out of the same set of facts and involve  
23 the same guaranty agreement. Plaintiff alleged in its complaint  
24 that defendant breached the guaranty agreement. Defendant  
25 counterclaimed that it was plaintiff who was in breach of the  
26 guaranty agreement. Defendant's remaining counterclaims against

1 plaintiff all arose out the consequences of the alleged breach by  
2 plaintiff. In short, both parties were relying on the guaranty  
3 agreement in order to secure relief. See Beyer Dec., Ex. E.  
4 Consequently no apportionment is necessary or practicable as the  
5 claims are "inextricably intertwined." Abdallah, 43 Cal.App.4th  
6 at 1111.

7 Second, defendant asserts that invoices submitted by plaintiff  
8 are vague as to how much time was spent on each specific claim and  
9 that some of the invoices are redacted and do not explain what a  
10 fee for "legal research" was specifically for or about. Def.'s  
11 Opp'n at 3-4. As noted above, the claims and counterclaims were  
12 so "inextricably intertwined" that apportionment would be  
13 impracticable. Abdallah, 43 Cal.App.4th at 1111. While the  
14 guaranty agreement itself provides for attorney's fees incurred as  
15 a result of enforcing the rights under the agreement, all of  
16 plaintiff's alleged subsequent injuries were suffered as a result  
17 of the breach of the guaranty agreement. The court ultimately  
18 granted summary judgment on all of plaintiffs claims. Therefore,  
19 all legal work performed by plaintiff's counsel was to enforce the  
20 guaranty agreements, efforts for which plaintiff was ultimately  
21 successful.

22 Finally, defendant argues that the amount of hours plaintiff  
23 claims to have spent on the litigation is excessive. Def.'s Opp'n  
24 at 4. An examination of Mr. Pinch's papers, declaration, and  
25 accompanying billing records leads the court to draw the conclusion  
26 that 257.8 hours is a reasonable amount of hours spent under the



1 circumstances. While defendant objects to the amount of hours  
2 spent on the litigation, he cannot point to specific examples of  
3 work that took an unreasonable amount of time. This litigation has  
4 been ongoing for nearly two years and involved numerous amended  
5 complaints, answers, and counterclaims. Additionally, plaintiff  
6 filed motions to compel, dismiss and a successful motion for  
7 summary judgment. Accordingly, 257.8 hours of work plaintiff spent  
8 on the litigation is reasonable.

9 **D. BILL OF COSTS**

10 Plaintiff requests \$644.68 for costs related to this suit.  
11 Specifically, plaintiff requests a \$150 filing fee, \$308.63 paid  
12 to Attorney's Diversified Services for serving defendant and  
13 \$186.05 in court reporter fees for the transcript of a deposition.  
14 Plaintiff has tendered to the court invoices evidencing these  
15 costs. Because these expenses are taxable pursuant to 28 U.S.C.  
16 § 1920, the court shall award plaintiff this requested amount.<sup>4</sup>

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17 <sup>4</sup> 28 U.S.C. § 1920 states:

18 A judge or clerk of any court of the United States may tax as costs  
19 the following:

- 20 1. Fees of the clerk and marshal;
- 21 2. Fees of the court reporter for all or any part of the  
22 stenographic transcript necessarily obtained for use in  
23 the case;
- 24 3. Fees and disbursements for printing and witnesses;
- 25 4. Fees for exemplification and copies of papers  
26 necessarily obtained for use in the case;
5. Docket fees under section 1923 of this title;
6. Compensation of court appointed experts, compensation of  
interpreters, and salaries, fees, expenses, and costs of  
special interpretation services under section 1828 of  
this title.

A bill of costs shall be filed in the case and, upon allowance,  
included in the judgment or decree.


IV.

CONCLUSION

Accordingly, plaintiff's counsel is AWARDED attorney's fees and costs in the amount of \$58,649.68.<sup>5</sup>

IT IS SO ORDERED.

DATED: July 18, 2006.

  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT

<sup>5</sup> The amount is based on those fees sufficiently documented by plaintiff's counsel as follows:

**Attorney's Fees**

	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
David Pinch	231.4	\$225/hr	\$52,065.00
Duane Geck	26.4	\$225/hr	5,940.00
Costs & Expenses			<u>644.68</u>
			<b>\$58,649.68</b>

Defendant points out that the guaranty on the wholesale agreement limits attorneys' fees to "15% of the amount then owing by Dealer, if permitted." Beyer Dec., Ex. D. Defendant argues that the amount recoverable by plaintiff for breach of that guaranty should be limited based on this contractual clause. Def.'s Opp'n at 5. Since there was more than one agreement at issue, and since none of the other agreements specify any sort of limit, those agreements can support the award even with the 15% limit set forth in the wholesale agreement.